

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re Application of

HCS Beteiligungsgesellschaft mbH,

Petitioner, for an Order Pursuant to 28 U.S.C.  
§ 1782 to Conduct Discovery for Use in a  
Foreign Proceeding.

Case No. 22-

**APPLICATION FOR AN ORDER PURSUANT TO 28 U.S.C. § 1782 TO CONDUCT  
DISCOVERY FOR USE IN A FOREIGN PROCEEDING**

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*\*Pro hac vice application forthcoming*

*Counsel for Petitioner*

1. HCS Beteiligungsgesellschaft mbH (“**Petitioner**”) respectfully requests an order in the form attached hereto permitting Petitioner to obtain limited discovery under 28 U.S.C. § 1782 (“**Section 1782**”) in connection with contemplated proceedings in Germany, to which Petitioner will be a party. In support of its application, Petitioner submits a Memorandum of Law and attaches the Declarations of Duane Loft, Olaf Gierke, and Tyler Burtis. Petitioner further states as follows:

2. Petitioner seeks the assistance of this Court to obtain discovery from Ruben King-Shaw Jr. (“**Respondent**”), who is “found” for purposes of Section 1782 in this District. Petitioner seeks document and deposition discovery permitted by the Federal Rules of Civil Procedure and as set forth in the subpoena attached as Exhibit 1 to the Loft Declaration. As set forth in the accompanying declarations, the discovery cannot be obtained in the underlying German proceedings, but the presiding German court will be highly receptive to evidence sought here and assistance from this Court.

3. Section 1782 permits litigants in foreign proceedings to obtain discovery in the United States to assist in the foreign litigation. In particular, § 1782 states:

The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation. The order may be made . . . upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court.

4. The statutory requirements of § 1782 are satisfied here. As explained in the accompanying submissions, (1) the Respondent is “found” in this District because Respondent is domiciled here as well as has substantial or continuous and systematic contacts with the District,

(2) the discovery sought is to be used in the contemplated German proceedings, and (3) Petitioner will be an “interested person” in those proceedings.

5. This application also meets the discretionary factors of Section 1782, as explained further in the accompanying Memorandum of Law: (1) Respondent will not be a party to the foreign proceedings, (2) German courts will be receptive to judicial assistance from a U.S. court, (3) Petitioner is not attempting to circumvent foreign proof-gathering restrictions, and (4) the discovery sought is not intrusive or burdensome. *See Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241 (2004).

6. Petitioner therefore respectfully requests that this Court expeditiously grant its application for an Order granting Petitioner leave to serve Respondent with the subpoena attached as Exhibit 1 to the Loft Declaration.

WHEREFORE, Petitioner respectfully requests that this Court enter an Order under which:

- a. Respondent shall respond to the Application within 14 days of service of the Application;
- b. Petitioner shall submit any reply within 7 days of any opposition;
- c. Absent timely objection by Respondent, Petitioner may serve the proposed Subpoena on Respondent, and Respondent shall comply with the terms thereof within 30 days of service of the Subpoena.

Dated: December 21, 2022

By: /s/ John P. Lewis

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